

1 KRISTIN HENRY (Cal. Bar No. 220908)

2 Sierra Club

3 85 Second Street, 2nd Floor

4 San Francisco, CA 94105

5 Telephone: (415) 977-5709

6 Facsimile: (415) 977-5793

7 Attorney for Plaintiffs WildEarth Guardians and Sierra Club

8 E-filing

9 UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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0190

) Case No.

14 WILDEARTH GUARDIANS, and

15 SIERRA CLUB

16 Plaintiffs,

17 v.

18 LISA P. JACKSON,

19 in her official capacity as Administrator of the

20 United States Environmental Protection Agency,

21 Defendant.

) COMPLAINT FOR DECLARATORY  
) AND INJUNCTIVE RELIEF

) (Clean Air Act, 42 U.S.C. §§ 7401 *et. seq.*)

FILED  
JAN 12 2011  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

## INTRODUCTION

1. Particulate matter less than 2.5 microns in diameter ("PM2.5"), sometimes referred to as fine particulate, is a major cause of serious air quality problems in many parts of the United States. Exposure to PM2.5 causes numerous human respiratory problems, including decreased lung function, asthma and bronchitis, and is also associated with premature mortality, hospital admissions, cardiopulmonary disease and lung cancer. The detrimental effects of PM2.5 are not limited to human health; PM2.5 also contributes to regional haze, thereby contributing to the visibility range limitations in some of our Nation's most treasured areas.

2. To better protect the public from the damage caused by PM2.5, the United States Environmental Protection Agency ("EPA") promulgated a revision to the PM2.5 National Ambient Air Quality Standard in 2006. Under the Clean Air Act, each state and territory of the United States is required to submit a plan, within three years of the promulgation or revision of new National Ambient Air Quality Standard, which addresses specific requirements to provide for the implementation, maintenance and enforcement of the new PM2.5 standard. These are known as "Infrastructure" state implementation plans. Without Infrastructure plans, citizens are not afforded full protection against the harmful effects of PM2.5.

3. EPA is required to take final action on a state's Infrastructure state implementation plan submittal by approving in full, disapproving in full, or approving in part and disapproving in part within 12 months of the date a submittal is deemed administratively complete. Furthermore, if a state failed to submit their Infrastructure state implementation plan by the required date, EPA is required to issue a finding stating so, known as a "finding of failure to submit." EPA has failed to take final action on at least six states' Infrastructure state implementation plan submittals. Additionally, EPA has failed to issue a finding of failure to submit a sufficient Infrastructure state implementation plan for at least 32 states and territories. Accordingly, Plaintiffs WILDEARTH GUARDIANS and SIERRA CLUB bring this action against Defendant LISA P. JACKSON, in her official capacity as EPA Administrator, to compel her to perform her mandatory duty with respect to these PM2.5 Infrastructure state implementation plans.

**JURISDICTION**

4. This case is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a)(2) (citizen suits for failure to perform a non-discretionary duty required by the Clean Air Act).

**NOTICE**

5. WildEarth Guardians and Sierra Club mailed to EPA by certified mail, return receipt requested, written notice of intent to sue regarding the violations alleged in this Complaint. EPA received the notice letter on October 13, 2010. More than sixty days have passed since EPA received the notice letter. EPA has not remedied the violations alleged in this Complaint. Therefore, a present and actual controversy exists between the parties.

**VENUE**

6. Defendant EPA resides in this judicial district. This civil action is brought against an officer of the United States acting in her official capacity and a substantial part of the events or omissions giving rise to the claims in this case occurred in the Northern District of California. One of the claims in this Complaint concerns EPA's failure to perform mandatory duties with regard to Hawaii. EPA Region 9, whose jurisdiction includes Hawaii, is headquartered in San Francisco. Thus several of the events and omissions at issue in this action occurred at EPA's Region 9 headquarters in San Francisco. In addition, Plaintiff Sierra Club is headquartered in San Francisco and Sierra Club's counsel is located in San Francisco. Therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

**INTRADISTRICT ASSIGNMENT**

7. A substantial part of the events and omissions giving rise to the claims in this case occurred in the County of San Francisco. Accordingly, assignment to the San Francisco Division or the Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d).

**PARTIES**

8. Plaintiff WILDEARTH GUARDIANS is a non-profit conservation organization with offices in Arizona, Colorado, and New Mexico. WildEarth Guardians protects and restores wild rivers, wildlife and wild places in the American West. A critical component of this work is

1 helping to foster an ethic of appreciation by allowing people to enjoy such wildlife, wild rivers  
2 and wild places.

3 9. Members and volunteers of WildEarth Guardians live, work, study, recreate, engage in  
4 other economic activities and obtain spiritual benefits, and will continue to do so regularly, in  
5 and around areas impacted by air pollution from Alaska, Colorado, Idaho, Kansas, Montana,  
6 Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington and Wyoming.

7 10. Plaintiff SIERRA CLUB is a national grassroots nonprofit conservation organization  
8 formed in 1872. Sierra Club's purpose includes practicing and promoting the responsible use of  
9 earth's ecosystems and resources, and protecting and restoring the quality of the natural and  
10 human environment.

11 11. Sierra Club has over 750,000 members nationally. Members and staff of Sierra Club  
12 live, work, recreate, and travel throughout the areas at issue in this case and will continue to do  
13 so on a regular basis. PM2.5 in the affected states and territories threatens, and will continue to  
14 threaten, the health and welfare of the Sierra Club's staff and members. Sierra Club staff's and  
15 members', as well as the public's, ability to enjoy the aesthetic qualities and recreational  
16 opportunities is diminished in the respective areas impacted by PM2.5.

17 12. EPA's failure to timely perform the mandatory duties described herein also adversely  
18 affects WildEarth Guardians and Sierra Club, as well as their staff and members, by depriving  
19 them of procedural protection and opportunities as well as information which they are entitled to  
20 under the Clean Air Act. The failure of EPA to perform the mandatory duties also creates  
21 uncertainty for WildEarth Guardians' and Sierra Club's staff and members as to whether they are  
22 exposed to excess air pollution.

23 13. The above injuries will continue until the Court grants the relief requested herein.

24 14. Defendant LISA P. JACKSON is the Administrator of the United States Environmental  
25 Protection Agency. In that role Administrator Jackson has been charged by Congress with the  
26 duty to administer the Clean Air Act, including the mandatory duties at issue in this case.  
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## LEGAL BACKGROUND

15. Congress enacted the Clean Air Act to “speed up, expand, and intensify the war against air pollution in the United States with a view to assuring that the air we breathe throughout the Nation is wholesome once again.” H.R.Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S.Code Cong. & Admin. News 5356, 5356. To promote this, the Act requires EPA to set National Ambient Air Quality Standards for certain pollutants, including PM<sub>2.5</sub>. National Ambient Air Quality Standards establish maximum allowable concentrations in the air of these pollutants.

16. Each National Ambient Air Quality Standard must be stringent enough to protect public health and welfare. Effects on welfare include, but are not limited to, effects on soils, water, vegetation, manmade materials, wildlife, visibility (*i.e.*, haze), climate, damage to property, economic impacts and effects on personal comfort and well-being.

17. The Clean Air Act requires each state to submit a state implementation plan for every promulgation or revision of a National Ambient Air Quality Standard, within three years of that standard’s promulgation or revision, that provides for the “implementation, maintenance, and enforcement” of the standard. 42 U.S.C. § 7410(a)(1). These are often referred to as “Infrastructure” state implementation plans.

18. An Infrastructure state implementation plan submittal must meet the requirements listed under 42 U.S.C. § 7410(a)(2). See 42 U.S.C. §§ 7410(a)(2)(A)-(M).

19. The Clean Air Act requires EPA to determine whether any state implementation plan submittal is administratively complete. See 42 U.S.C. 7410(k)(1)(B). If, six months after a state submits a state implementation plan, EPA has not made the completeness finding and has not found the submittal to be incomplete, the submittal is deemed administratively complete by operation of law. Id.

20. EPA has a mandatory duty to take final action on any administratively complete state implementation plan submittal by approving in full, disapproving in full or approving in part and disapproving in part within 12 months of the date it is deemed administratively complete. 42 U.S.C. § 7410(k)(2).

21. If a state fails to submit any required state implementation plan, there is no submittal that may be deemed administratively complete and EPA must make a determination stating that the state failed to submit the required state implementation plan. 42 U.S.C. § 7410(k)(1)(B). This is referred to as a “finding of failure to submit.”

#### STATE IMPLEMENTATION PLAN SUBMITTALS

22. On October 17, 2006, EPA promulgated a revision to the PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard. 71 Fed. Reg. 61144 (Oct. 17, 2006). The effective date of the new standard is December 18, 2006. *Id.*

23. On January 15, 2009, either EPA or operation of law deemed Alabama’s 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Alabama (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/al\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/al_infrabypoll.html)) (as viewed Oct. 7, 2010).<sup>1</sup>

24. On May 18, 2009, either EPA or operation of law deemed Connecticut’s 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the prevention of significant deterioration (“PSD”) element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. *See* EPA, Status of State SIP Infrastructure Requirements—Connecticut (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/ct\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/ct_infrabypoll.html)) (last viewed Dec. 6, 2010).

25. On January 6, 2008, either EPA or operation of law deemed Florida’s 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. *See* EPA, Status of State SIP Infrastructure Requirements—

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<sup>1</sup> It appears that Alabama made another submittal that either EPA or operation of law deemed administratively complete on March 23, 2010. *See* EPA, Status of State SIP Infrastructure Requirements—Alabama (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/al\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/al_infrabypoll.html)) (last viewed Dec. 7, 2010). However, the new submittal does not obviate EPA’s existing mandatory duty to take final action on Alabama’s prior 2006 PM<sub>2.5</sub> Infrastructure submittal.

Florida (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/fl\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/fl_infrabypoll.html)) (as viewed Oct. 7, 2010).<sup>2</sup>

26. On May 28, 2008, either EPA or operation of law deemed Mississippi's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—Mississippi (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/ms\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html)) (as viewed Oct. 7, 2010).<sup>3</sup>

27. Additionally, on March 22, 2009, either EPA or operation of law deemed Mississippi's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. Id.

28. On June 17, 2007, either EPA or operation of law deemed North Carolina's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—North Carolina (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/nc\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html)) (as viewed Oct. 7, 2010).<sup>4</sup>

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<sup>2</sup> It appears that Florida made another submittal that either EPA or operation of law deemed administratively complete on March 23, 2010. See EPA, Status of State SIP Infrastructure Requirements—Florida (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/fl\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/fl_infrabypoll.html)) (last viewed Dec. 7, 2010). However, the new submittal does not obviate EPA's existing mandatory duty to take final action on Florida's prior 2006 PM<sub>2.5</sub> Infrastructure submittal.

<sup>3</sup> It appears that Mississippi made another submittal that either EPA or operation of law deemed administratively complete on April 6, 2010. See EPA, Status of State SIP Infrastructure Requirements—Mississippi (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/ms\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html)) (last viewed Dec. 7, 2010). However, the new submittal does not obviate EPA's existing mandatory duty to take final action on Mississippi's prior 2006 PM<sub>2.5</sub> Infrastructure submittals.

<sup>4</sup> It appears that North Carolina made another submittal that either EPA or operation of law deemed administratively complete on March 21, 2010. See EPA, Status of State SIP Infrastructure Requirements—North Carolina (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/nc\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html)) (last viewed Dec. 7, 2010). However, the new submittal does not obviate EPA's existing mandatory duty to take final action on North Carolina's prior 2006 PM<sub>2.5</sub> Infrastructure submittal.

29. On October 4, 2008, either EPA or operation of law deemed Tennessee's infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—Tennessee (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/tn\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/tn_infrabypoll.html)) (as viewed Oct. 7, 2010).<sup>5</sup>

## CLAIMS FOR RELIEF

### CLAIM ONE

(EPA's Failure to Take Final Action on Six States' 2006 PM<sub>2.5</sub> Infrastructure State Implementation Plan Submittals)

30. Plaintiffs incorporate by reference paragraphs 1 through 29.

31. The Clean Air Act requires EPA to determine whether any state implementation plan submittal is administratively complete. See 42 U.S.C. 7410(k)(1)(B).

32. If, six months after a state submits a state implementation plan, EPA has not made the completeness finding and has not found the submittal to be incomplete, the submittal is deemed administratively complete by operation of law. Id.

33. EPA must take final action on an administratively complete submittal by approving in full, disapproving in full, or approving in part and disapproving in part within 12 months of the date of the submittal's completeness finding. 42 U.S.C. § 7410(k)(2).

34. On January 15, 2009, either EPA or operation of law deemed Alabama's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—Alabama (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/al\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/al_infrabypoll.html)) (as viewed Oct. 7, 2010).

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<sup>5</sup> It appears that Tennessee made another submittal that either EPA or operation of law deemed administratively complete on March 21, 2010. See EPA, Status of State SIP Infrastructure Requirements—Tennessee (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/tn\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/tn_infrabypoll.html)) (last viewed Dec. 7, 2010). However, the new submittal does not obviate EPA's existing mandatory duty to take final action on Tennessee's prior 2006 PM<sub>2.5</sub> Infrastructure submittal.



35. Thus, pursuant to 42 U.S.C. § 7410(k)(2), EPA has a mandatory duty to take final action on Alabama's 2006 PM<sub>2.5</sub> Infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by no later than January 15, 2010.

36. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Alabama's 2006 PM<sub>2.5</sub> Infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by January 15, 2010.

37. On May 18, 2009, either EPA or operation of law deemed Connecticut's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—Connecticut (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/ct\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/ct_infrabypoll.html)) (last viewed Dec. 6, 2010).

38. Thus, pursuant to 42 U.S.C. § 7410(k)(2), EPA has a mandatory duty to take final action on Connecticut's 2006 PM<sub>2.5</sub> Infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by no later than May 18, 2010.

39. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Connecticut's 2006 PM<sub>2.5</sub> Infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by May 18, 2010.

40. On January 6, 2008, either EPA or operation of law deemed Florida's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—Florida (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/fl\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/fl_infrabypoll.html)) (as viewed Oct. 7, 2010).

41. Thus, pursuant to 42 U.S.C. § 7410(k)(2), EPA has a mandatory duty to take final action on Florida's 2006 PM<sub>2.5</sub> Infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by no later than January 6, 2009.

42. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Florida's 2006 PM<sub>2.5</sub> Infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by January 6, 2009.

43. On May 28, 2008, either EPA or operation of law deemed Mississippi's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—Mississippi (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/ms\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html)) (as viewed Oct. 7, 2010)..

44. Thus, pursuant to 42 U.S.C. § 7410(k)(2), EPA has a mandatory duty to take final action on Mississippi's 2006 PM<sub>2.5</sub> Infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by no later than May 28, 2009.

45. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Mississippi's 2006 PM<sub>2.5</sub> Infrastructure state implementation plan submittal addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by May 28, 2009.

46. On March 22, 2009, either EPA or operation of law deemed Mississippi's 2006 PM<sub>2.5</sub> infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—Mississippi (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/ms\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/ms_infrabypoll.html)) (as viewed Oct. 7, 2010).

47. EPA has a mandatory duty to take final action on Mississippi's 2006 PM<sub>2.5</sub> Infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by no later than March 22, 2010.

48. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Mississippi's 2006 PM<sub>2.5</sub> Infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by March 22, 2010.

49. Either EPA or operation of law deemed North Carolina's infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete on June 17, 2007. See EPA, Status of State SIP Infrastructure Requirements—North Carolina (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/nc\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/nc_infrabypoll.html)) (as viewed Oct. 7, 2010).

50. Thus, pursuant to 42 U.S.C. § 7410(k)(2), EPA has a mandatory duty to take final action on North Carolina's 2006 PM<sub>2.5</sub> Infrastructure state implementation plan submittal addressing the visibility component of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by no later than June 17, 2008.

51. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part North Carolina's 2006 PM<sub>2.5</sub> Infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by June 17, 2008.

52. On October 4, 2008, either EPA or operation of law deemed Tennessee's infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) complete. See EPA, Status of State SIP Infrastructure Requirements—Tennessee (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/tn\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/tn_infrabypoll.html)) (as viewed Oct. 7, 2010).

53. Thus, pursuant to 42 U.S.C. § 7410(k)(2), EPA has a mandatory duty to take final action on Tennessee's 2006 PM<sub>2.5</sub> Infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by no later than October 4, 2009.

54. EPA has failed to perform this mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Tennessee's 2006 PM<sub>2.5</sub> Infrastructure state implementation plan submittal addressing the visibility element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) by October 4, 2009.

55. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(k)(2) to take final action on Infrastructure state implementation plan submittals by Alabama, Connecticut, Florida, Mississippi, North Carolina and Tennessee. This violation of a mandatory duty is ongoing.

## CLAIM TWO

(EPA's Failure to Make Findings of Failure to Submit Sufficient Infrastructure State Implementation Plans for the 2006 PM<sub>2.5</sub> National Ambient Air Quality Standard)

56. Plaintiffs incorporate by reference paragraphs 1 through 55.

57. Pursuant to the Clean Air Act, each state must submit an "Infrastructure" state implementation plan that provides for the "implementation, maintenance, and enforcement" of a National Ambient Air Quality Standard within three years of a standard's promulgation or revision. 42 U.S.C. § 7410(a)(1).

58. The Clean Air Act requires EPA to determine whether a state implementation plan submittal is administratively complete. See 42 U.S.C. 7410(k)(1)(B).

59. If a state fails to submit any required state implementation plan, there is no submittal that may be deemed administratively complete and EPA must make a determination stating that the state failed to submit the required state implementation plan. See 42 U.S.C. § 7410(k)(1)(B). This is referred to as a "finding of failure to submit."

60. Thus, if a state does not submit a state implementation plan, a finding of failure to submit must be made no later than six months after the date by which the state implementation plan submittal was due. See 42 U.S.C. § 7410(k)(1)(B).

61. EPA promulgated a revision to the PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard on October 17, 2006. 71 Fed. Reg. 61144 (Oct. 17, 2006).

62. The effective date of the 2006 PM<sub>2.5</sub> standard is December 18, 2006. Id.

63. Thus, states and territories are required to submit Infrastructure state implementation plans for the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard by no later than December 18, 2009. See 42 U.S.C. § 7410(a)(1).

64. Alaska has failed to submit an Infrastructure state implementation plan or revision addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Alaska (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/ak\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/ak_infrabypoll.html)) (last viewed Dec. 6,



2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank for Alaska’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

65. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Alaska regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

66. EPA has failed, and continues to fail, to make this finding of failure to submit for Alaska.

67. Colorado has failed to submit an Infrastructure state implementation plan or revision addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Colorado (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/co\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/co_infrabypoll.html)) (last viewed Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank for Colorado’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

68. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Colorado regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

69. EPA has failed, and continues to fail, to make this finding of failure to submit for Colorado.

70. Hawaii has failed to submit an Infrastructure state implementation plan or revision addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Hawaii (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/hi\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/hi_infrabypoll.html)) (last viewed Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at

[http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank for Hawaii’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

71. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Hawaii regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

72. EPA has failed, and continues to fail, to make this finding of failure to submit for Hawaii.

73. Iowa has failed to submit an Infrastructure state implementation plan or revision addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Iowa (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/ia\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/ia_infrabypoll.html)) (last viewed Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank for Iowa’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

74. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Iowa regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

75. EPA has failed, and continues to fail, to make this finding of failure to submit for Iowa.

76. Idaho has failed to submit an Infrastructure state implementation plan or revision addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Idaho (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/id\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/id_infrabypoll.html)) (last viewed Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank

1 for Idaho's 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and  
 2 listed as "Submission" for certain Pennsylvania requirements).

3 77. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
 4 finding of failure to submit for Idaho regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air  
 5 Quality Standard Infrastructure state implementation plan addressing the requirements under 42  
 6 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

7 78. EPA has failed, and continues to fail, to make this finding of failure to submit for Idaho.

8 79. Illinois has failed to submit an Infrastructure state implementation plan or revision  
 9 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and  
 10 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Illinois (available at  
 11 [http://www.epa.gov/air/urbanair/sipstatus/reports/il\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/il_infrabypoll.html)) (last viewed Dec. 6, 2010)  
 12 with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at  
 13 [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) ("Latest Action" is blank  
 14 for Illinois' 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and  
 15 listed as "Submission" for certain Pennsylvania requirements).

16 80. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
 17 finding of failure to submit for Illinois regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air  
 18 Quality Standard Infrastructure state implementation plan addressing the requirements under 42  
 19 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

20 81. EPA has failed, and continues to fail, to make this finding of failure to submit for Illinois.

21 82. Louisiana has failed to submit an Infrastructure state implementation plan or revision  
 22 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and  
 23 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Louisiana (available  
 24 at [http://www.epa.gov/air/urbanair/sipstatus/reports/la\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/la_infrabypoll.html)) (last viewed Dec. 6,  
 25 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at  
 26 [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) ("Latest Action" is blank  
 27 for Louisiana's 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements  
 28 and listed as "Submission" for certain Pennsylvania requirements).



83. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Louisiana regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

84. EPA has failed, and continues to fail, to make this finding of failure to submit for Louisiana.

85. Maryland has failed to submit an Infrastructure state implementation plan or revision addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Maryland (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/md\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/md_infrabypoll.html)) (last viewed Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank for Maryland’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

86. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Maryland regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

87. EPA has failed, and continues to fail, to make this finding of failure to submit for Maryland.

88. Montana has failed to submit an Infrastructure state implementation plan or revision addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Montana (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/mt\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/mt_infrabypoll.html)) (last viewed Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank for Montana’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and listed as “Submission” for certain Pennsylvania requirements).



89. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Montana regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

90. EPA has failed, and continues to fail, to make this finding of failure to submit for Montana.

91. Nebraska has failed to submit an Infrastructure state implementation plan or revision addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Nebraska (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/ne\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/ne_infrabypoll.html)) (last viewed Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank for Nebraska’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

92. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Nebraska regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

93. EPA has failed, and continues to fail, to make this finding of failure to submit for Nebraska.

94. North Dakota has failed to submit an Infrastructure state implementation plan or revision addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements— North Dakota (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/nd\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/nd_infrabypoll.html)) (last viewed Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank for North Dakota’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

1 95. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
2 finding of failure to submit for North Dakota regarding the 2006 PM<sub>2.5</sub> 24-hour National  
3 Ambient Air Quality Standard Infrastructure state implementation plan addressing the  
4 requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

5 96. EPA has failed, and continues to fail, to make this finding of failure to submit for North  
6 Dakota.

7 97. Oklahoma has failed to submit an Infrastructure state implementation plan or revision  
8 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and  
9 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Oklahoma (available  
10 at [http://www.epa.gov/air/urbanair/sipstatus/reports/ok\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/ok_infrabypoll.html)) (last viewed Dec. 6,  
11 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at  
12 [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank  
13 for Oklahoma’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements  
14 and listed as “Submission” for certain Pennsylvania requirements).

15 98. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
16 finding of failure to submit for Oklahoma regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient  
17 Air Quality Standard Infrastructure state implementation plan addressing the requirements under  
18 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

19 99. EPA has failed, and continues to fail, to make this finding of failure to submit for  
20 Oklahoma.

21 100. Oregon has failed to submit an Infrastructure state implementation plan or revision  
22 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and  
23 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Oregon (available at  
24 [http://www.epa.gov/air/urbanair/sipstatus/reports/or\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/or_infrabypoll.html)) (last viewed Dec: 6, 2010)  
25 with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at  
26 [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank  
27 for Oregon’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and  
28 listed as “Submission” for certain Pennsylvania requirements).

101. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Oregon regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

102. EPA has failed, and continues to fail, to make this finding of failure to submit for Oregon.

103. South Dakota has failed to submit an Infrastructure state implementation plan or revision addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—South Dakota (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/sd\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/sd_infrabypoll.html)) (last viewed Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank for South Dakota’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

104. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for South Dakota regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

105. EPA has failed, and continues to fail, to make this finding of failure to submit for South Dakota.

106. Utah has failed to submit an Infrastructure state implementation plan or revision addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Utah (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/ut\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/ut_infrabypoll.html)) (last viewed Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank for Utah’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

1 107. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
2 finding of failure to submit for Utah regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air  
3 Quality Standard Infrastructure state implementation plan addressing the requirements under 42  
4 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

5 108. EPA has failed, and continues to fail, to make this finding of failure to submit for Utah.

6 109. Virginia has failed to submit an Infrastructure state implementation plan or revision  
7 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and  
8 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements— Virginia (available at  
9 [http://www.epa.gov/air/urbanair/sipstatus/reports/va\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/va_infrabypoll.html)) (last viewed Dec. 6,  
10 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at  
11 [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank  
12 for Virginia’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and  
13 listed as “Submission” for certain Pennsylvania requirements).

14 110. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
15 finding of failure to submit for Virginia regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient  
16 Air Quality Standard Infrastructure state implementation plan addressing the requirements under  
17 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

18 111. EPA has failed, and continues to fail, to make this finding of failure to submit for  
19 Virginia.

20 112. Washington has failed to submit an Infrastructure state implementation plan or revision  
21 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and  
22 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements— Washington  
23 (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/wa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/wa_infrabypoll.html)) (last viewed  
24 Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania  
25 (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest  
26 Action” is blank for Washington’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M)  
27 submittal requirements and listed as “Submission” for certain Pennsylvania requirements).  
28



1 113. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
2 finding of failure to submit for Washington regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient  
3 Air Quality Standard Infrastructure state implementation plan addressing the requirements under  
4 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

5 114. EPA has failed, and continues to fail, to make this finding of failure to submit for  
6 Washington.

7 115. Wyoming has failed to submit an Infrastructure state implementation plan or revision  
8 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and  
9 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements— Wyoming (available  
10 at [http://www.epa.gov/air/urbanair/sipstatus/reports/wy\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/wy_infrabypoll.html)) (last viewed Dec. 6,  
11 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at  
12 [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank  
13 for Wyoming’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements  
14 and listed as “Submission” for certain Pennsylvania requirements).

15 116. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
16 finding of failure to submit for Wyoming regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient  
17 Air Quality Standard Infrastructure state implementation plan addressing the requirements under  
18 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

19 117. EPA has failed, and continues to fail, to make this finding of failure to submit for  
20 Wyoming.

21 118. Puerto Rico has failed to submit an Infrastructure state implementation plan or revision  
22 addressing the infrastructure requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and  
23 (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements— Puerto Rico  
24 (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pr\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pr_infrabypoll.html)) (last viewed  
25 Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania  
26 (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest  
27 Action” is blank for Puerto Rico’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M)  
28 submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

119. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Puerto Rico regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

120. EPA has failed, and continues to fail, to make this finding of failure to submit for Puerto Rico.

121. The District of Columbia has failed to submit an Infrastructure state implementation plan or revision addressing the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II). Compare EPA, Status of State SIP Infrastructure Requirements—District of Columbia (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/dc\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/dc_infrabypoll.html)) (last viewed Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank for the District of Columbia’s 42 U.S.C. § 7410(a)(2)(D)(i)(II) submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

122. Though EPA has issued a proposed approval of the District of Columbia’s submittal addressing the requirements of 42 U.S.C. § 7410(a)(2) for the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard, the proposed approval, and the District of Columbia’s submittal, did not include the requirements of 42 U.S.C. § 7410(a)(2)(D)(i). See 75 Fed. Reg. 27512 (May 17, 2010).

123. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for the District of Columbia regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II).

124. EPA has failed, and continues to fail, to make this finding of failure to submit for the District of Columbia.

125. Indiana has failed to submit an Infrastructure state implementation plan or revision addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

Compare EPA, Status of State SIP Infrastructure Requirements— Indiana (available at

1 [http://www.epa.gov/air/urbanair/sipstatus/reports/in\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/in_infrabypoll.html)) (last viewed Dec. 6, 2010)  
2 with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at  
3 [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank  
4 for Indiana’s 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and  
5 listed as “Submission” for certain Pennsylvania requirements).

6 126. As previously stated, the Clean Air Act requires a state to submit a state implementation  
7 plan providing for the “implementation, maintenance, and enforcement” of a new or revised  
8 National Ambient Air Quality Standard within three years *after* the standard’s promulgation. 42  
9 U.S.C. § 7410(a)(1) (emphasis added).

10 127. EPA claims to have approved Indiana’s submittal addressing the PSD element of 42  
11 U.S.C. § 7410(a)(2)(D)(i)(II) on May 20, 2004. See EPA, Status of State SIP Infrastructure  
12 Requirements—Indiana.

13 128. EPA cannot approve Indiana’s Infrastructure state implementation plan submittal  
14 addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) *two years before* the  
15 promulgation of the 2006 PM<sub>2.5</sub> National Ambient Air Quality standard.

16 129. Thus, Indiana has failed to submit a state implementation plan addressing the PSD  
17 element of 42 U.S.C. § 7410(a)(2)(D)(i)(II).

18 130. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
19 finding of failure to submit for Indiana regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air  
20 Quality Standard Infrastructure state implementation plan addressing the requirements under 42  
21 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

22 131. EPA has failed, and continues to fail, to make this finding of failure to submit for  
23 Indiana.

24 132. Kansas has failed to submit an Infrastructure state implementation plan or revision  
25 addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(M). Compare EPA, Status of  
26 State SIP Infrastructure Requirements— Kansas (available at  
27 [http://www.epa.gov/air/urbanair/sipstatus/reports/ks\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/ks_infrabypoll.html)) (last viewed Dec. 6, 2010)  
28 with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at

1 [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank  
2 for Kansas’ 42 U.S.C. §§ 7410(a)(2)(A)-(M) submittal requirements and listed as “Submission”  
3 for certain Pennsylvania requirements).

4 133. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
5 finding of failure to submit for Kansas regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air  
6 Quality Standard Infrastructure state implementation plan addressing the requirements under 42  
7 U.S.C. §§ 7410(a)(2)(A)-(M).

8 134. EPA has failed, and continues to fail, to make this finding of failure to submit for Kansas.

9 135. Maine has failed to submit an Infrastructure state implementation plan or revision  
10 addressing the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II). Compare EPA, Status of  
11 State SIP Infrastructure Requirements— Maine (available at

12 [http://www.epa.gov/air/urbanair/sipstatus/reports/me\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/me_infrabypoll.html)) (last viewed Dec. 6,  
13 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at  
14 [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank  
15 for Maine’s 42 U.S.C. § 7410(a)(2)(D)(i)(II) submittal requirements and listed as “Submission”  
16 for certain Pennsylvania requirements).

17 136. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
18 finding of failure to submit for Maine regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air  
19 Quality Standard Infrastructure state implementation plan addressing the requirements 42 U.S.C.  
20 § 7410(a)(2)(D)(i)(II).

21 137. EPA has failed, and continues to fail, to make this finding of failure to submit for Maine.

22 138. Pennsylvania has failed to submit an Infrastructure state implementation plan or revision  
23 addressing the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II). See EPA, Status of State

24 SIP Infrastructure Requirements— Pennsylvania (available at  
25 [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (last viewed Dec. 6,  
26 2010) (“Latest Action” is blank for 42 U.S.C. § 7410(a)(2)(D)(i)(II) submittal requirements and  
27 listed as “Submission” for other requirements).



139. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Pennsylvania regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. § 7410(a)(2)(D)(i)(II).

140. EPA has failed, and continues to fail, to make this finding of failure to submit for Pennsylvania.

141. Michigan has failed to submit an Infrastructure state implementation plan or revision addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) (the portion addressing the visibility element) and (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Michigan (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/mi\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/mi_infrabypoll.html)) (last viewed Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank for Michigan’s submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

142. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Michigan regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) (the portion addressing the visibility element) and (E)-(M).

143. EPA has failed, and continues to fail, to make this finding of failure to submit for Michigan.

144. Minnesota has failed to submit an Infrastructure state implementation plan or revision addressing the requirements under 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) (the portion addressing the PSD element) and (E)-(M). Compare EPA, Status of State SIP Infrastructure Requirements—Minnesota (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/mn\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/mn_infrabypoll.html)) (last viewed Dec. 8, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at

1 [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank  
2 for certain Minnesota submittal requirements while listed as “Submission” for certain  
3 Pennsylvania requirements).

4 145. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a  
5 finding of failure to submit for Minnesota regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient  
6 Air Quality Standard Infrastructure state implementation plan addressing the requirements under  
7 42 U.S.C. §§ 7410(a)(2)(A)-(C), (D)(i)(II) (the portion addressing the PSD element) and (E)-  
8 (M).

9 146. EPA has failed, and continues to fail, to make this finding of failure to submit for  
10 Minnesota.

11 147. Ohio has failed to submit an Infrastructure state implementation plan or revision  
12 addressing the requirements under 42 U.S.C. § 7410(a)(2)(D). Compare EPA, Status of State  
13 SIP Infrastructure Requirements— Ohio (available at  
14 [http://www.epa.gov/air/urbanair/sipstatus/reports/oh\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/oh_infrabypoll.html)) (last viewed Dec. 6,  
15 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at  
16 [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank  
17 for Ohio’s 42 U.S.C. § 7410(a)(2)(D) submittal requirements and listed as “Submission” for  
18 certain Pennsylvania requirements).

19 148. As previously stated, the Clean Air Act requires a state to submit a state implementation  
20 plan providing for the “implementation, maintenance, and enforcement” of a new or revised  
21 National Ambient Air Quality Standard within three years *after* the standard’s promulgation. 42  
22 U.S.C. § 7410(a)(1) (emphasis added).

23 149. EPA claims to have approved Ohio’s submittal addressing the PSD element of the  
24 requirement under 42 U.S.C. § 7410(a)(2)(D)(i)(II) on March 10, 2003. See 68 Fed. Reg. 2909  
25 (March 10, 2003); EPA, Status of State SIP Infrastructure Requirements—Ohio.

26 150. EPA cannot approve Ohio’s Infrastructure state implementation plan submittal  
27 addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II) *three years before* the  
28 promulgation of the 2006 PM<sub>2.5</sub> National Ambient Air Quality standard.

151. Thus, Ohio has failed to submit a state implementation plan addressing the PSD element of 42 U.S.C. § 7410(a)(2)(D)(i)(II).

152. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Ohio regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. § 7410(a)(2)(D).

153. EPA has failed, and continues to fail, to make this finding of failure to submit for Ohio.

154. Wisconsin has failed to submit an Infrastructure state implementation plan or revision addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

Compare EPA, Status of State SIP Infrastructure Requirements— Wisconsin (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/wi\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/wi_infrabypoll.html)) (last viewed Dec. 6, 2010) with EPA, Status of State SIP Infrastructure Requirements—Pennsylvania (available at [http://www.epa.gov/air/urbanair/sipstatus/reports/pa\\_infrabypoll.html](http://www.epa.gov/air/urbanair/sipstatus/reports/pa_infrabypoll.html)) (“Latest Action” is blank for Wisconsin’s 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M) submittal requirements and listed as “Submission” for certain Pennsylvania requirements).

155. Accordingly, EPA has a mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit for Wisconsin regarding the 2006 PM<sub>2.5</sub> 24-hour National Ambient Air Quality Standard Infrastructure state implementation plan addressing the requirements under 42 U.S.C. § 7410(a)(2)(A)-(C), (D)(i)(II) and (E)-(M).

156. EPA has failed, and continues to fail, to make this finding of failure to submit for Wisconsin.

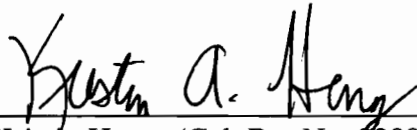
157. Accordingly, EPA is violation of its mandatory duty under 42 U.S.C. § 7410(k)(1)(B) to issue a finding of failure to submit sufficient Infrastructure state implementation plans for the follow states and territories: Alaska, Colorado, Hawaii, Iowa, Idaho, Illinois, Louisiana, Maryland, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Virginia, Washington, Wyoming, Puerto Rico, the District of Columbia, Indiana, Kansas, Maine, Pennsylvania, Michigan, Minnesota, Ohio and Wisconsin.

**REQUEST FOR RELIEF**

WHEREFORE, WildEarth Guardians and Sierra Club respectfully request that the Court:

- A. Declare that the Administrator is in violation of the Clean Air Act with regard to her failure to perform each mandatory duty listed above;
- B. Issue a mandatory injunction requiring the Administrator to perform her mandatory duties by certain dates;
- C. Retain jurisdiction of this matter for purposes of enforcing and effectuating the Court's order;
- D. Grant WildEarth Guardians and Sierra Club their reasonable costs of litigation, including attorneys' and expert fees; and
- E. Grant such further relief as the Court deems just and proper.

Respectfully submitted,



Kristin Henry (Cal. Bar No. 220908)  
Sierra Club  
85 Second Street, 2nd Floor  
San Francisco, CA 94105  
Telephone: (415) 977-5709  
Facsimile: (415) 977-5793

Dated: January 12, 2011